

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>KOLLER CONCRETE, INC.,</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiff</b>	:	
	:	
<b>v.</b>	:	<b>NO. 10-1250</b>
	:	
<b>TUBE CITY IMS, LLS,</b>	:	
<b>Defendant</b>	:	

**ORDER**

**AND NOW**, this 21st day of June, 2010, after a careful review of the pleadings, and a conference with counsel, it has become evident that this court lacks subject-matter jurisdiction. Accordingly, pursuant to Rule 12(h)(3) of the Federal Rules of Civil Procedure, it is hereby **ORDERED** that this action is DISMISSED without prejudice.<sup>1</sup>

BY THE COURT:

/s/ Lawrence F. Stengel  
LAWRENCE F. STENGEL, J.

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<sup>1</sup> This case was removed here from the Court of Common Pleas of Philadelphia County based on the diverse citizenship of the parties. However, the Notice of Removal indicates that the plaintiff is a Pennsylvania corporation with its principal place of business in Bethlehem, and the defendant is a limited liability company operating under the laws of Delaware with its principal place of business in Glassport, Pennsylvania. Title 28 of U.S.C. § 1332(c)(1) provides that a corporation shall be deemed to be a citizen of any state by which it has been incorporated and of the state where it has its principal place of business. Here, because the defendant is a citizen of Delaware and Pennsylvania, diversity of citizenship is not complete. Accordingly, I will dismiss this case without prejudice to allow the parties to re-file in the appropriate state forum.